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DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-825]

Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of utility scale wind towers (wind towers) from the Socialist Republic of Vietnam (Vietnam) by CS Wind Group¹ are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation January 1, 2019 through June 30, 2019.

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Joshua A. DeMoss, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3362.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2019, the Wind Tower Trade Coalition (the petitioner) filed the antidumping duty Petition on wind towers from Vietnam.² The petitioner explained in the Petition its belief

¹ CS Wind Vietnam Co., Ltd. (also known as CS Wind Tower Co., Ltd.) and CS Wind Corporation (collectively, CS Wind Group) are the two entities that are directly involved in the production, export, and sale of subject merchandise. As explained in the Clarification of the Respondent's Name section *infra*, in this final determination we clarify that this investigation covers the CS Wind Group.

² See Petitioner's Letter, "Petition for the Imposition of Antidumping Duties on Utility Scale Wind Towers from the Socialist Republic of Vietnam," dated July 9, 2019 (Petition), Volume V of the Petition at 1.

that CS Wind Vietnam Co., Ltd. (CS Wind) is the sole Vietnamese wind tower producer and exporter that is not subject to the *Existing Wind Towers Order* wind towers from Vietnam.³ The petitioner noted that: “The U.S. International Trade Commission found that there were no imports of wind towers from Vietnamese firms other than CS Wind from 2012- June 2018. Therefore, we believe that all exports to the United States from Vietnam are produced by CS Wind and thus subject to this antidumping duty investigation.”⁴

On August 5, 2019, Commerce published the Initiation Notice in this investigation of wind towers from Vietnam.⁵ In the Initiation Notice, we stated that this investigation applies to CS Wind and again noted that petitioner identified CS Wind as “the only Vietnamese wind tower producer that is not currently subject to the existing AD order on wind towers from Vietnam.”⁶

On February 14, 2020, Commerce published in the *Federal Register* the *Preliminary Determination* of sales at LTFV by CS Wind of wind towers from Vietnam.⁷

On February 27, 2020, Commerce postponed the deadline for the final determination until June 29, 2020.⁸ We invited interested parties to comment on the *Preliminary Determination*. A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this

³ *Id.* (citing *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 11150 (February 15, 2013) (*Existing Wind Towers Order*)),

⁴ *Id.* (citing *Utility Scale Wind Towers from China and Vietnam*, Inv. Nos. 701-TA-486 and 731-TA-1195-1196, USITC Pub. 4888 (Apr. 2019) (Review) at IV-1).

⁵ See *Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 84 FR 37992 (August 5, 2019) (Initiation Notice).

⁶ *Id.*, 84 FR at 37997.

⁷ See *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value and Preliminary Affirmative Determination of Critical Circumstances*, 85 FR 8565 (February 14, 2020), and accompanying Preliminary Decision Memorandum (*Preliminary Determination*).

⁸ See *Utility Scale Wind Towers From the Socialist Republic of Vietnam: Postponement of Final Determination of Sales at Less-Than-Fair-Value Investigation*, 85 FR 11341 (February 27, 2020).

final determination, may be found in the Issues and Decision Memorandum, which is adopted by this notice.⁹

Clarification of the Respondent's Name

In the *Preliminary Determination*, consistent with the information provided by the petitioners in the Petition, we stated that CS Wind is the only producer and exporter of wind towers in Vietnam not currently subject to the *Existing Wind Towers Order* from Vietnam.¹⁰ However, the Petition also explained that it intended for the investigation to apply to the producer/exporter combination excluded from the *Existing Wind Towers Order*.¹¹ The companies excluded from the *Existing Wind Towers Order* are in fact the CS Wind Group, consisting of CS Wind and its owner, CS Wind Corporation, which were determined to be affiliated in that proceeding.¹² In addition, information on the record indicates that CS Wind was formerly known as CS Wind Tower Co., Ltd.¹³ and Commerce received a communication from U.S. Customs and Border Protection (CBP), requesting information as to whether the entity “CS Wind Tower Co., Ltd.” is the same company as the mandatory respondent CS Wind Vietnam Co., Ltd. “CS Wind Tower Co., Ltd.”¹⁴ On the basis of this record information, we conclude that CS Wind Vietnam Co., Ltd. and CS Wind Tower Co., Ltd. are the same entity and will convey that understanding to CBP upon the issuance of this final determination.

⁹ See Memorandum, “Issues and Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from the Socialist Republic of Vietnam,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

¹⁰ See *Preliminary Determination* at 1 (citing *Existing Wind Towers Order*; and *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony With the Final Determination of Less Than Fair Value Investigation and Notice of Amended Final Determination of Investigation*, 82 FR 15493 (March 29, 2017) (*Amended Final Determination*)).

¹¹ See Volume V of the Petition at 1

¹² *Id.*

¹³ See CS Wind’s Letter, “CS Wind’s Section A Questionnaire Response in the Antidumping Duty Investigation of Utility Scale Wind Towers From the Socialist Republic of Vietnam (A-552-825),” dated September 6, 2019, at 26.

¹⁴ See Commerce’s Memo, “U.S. Customs and Border Protection Question,” dated June 18, 2020.

Because nothing on the record indicates that the status of the entities in the CS Wind Group have changed, and as indicated in the Petition, *Initiation Notice*, and the *Preliminary Determination*, this investigation is intended to cover the producer and exporter combination excluded from the *Existing Wind Towers Order*, for purposes of the final determination, Commerce clarifies that this investigation covers wind towers produced and exported by the CS Wind Group, which includes CS Wind Vietnam Co., Ltd., otherwise known as CS Wind Tower Co., Ltd. (collectively, CS Wind) and its affiliated owner, CS Wind Corporation.¹⁵

Scope of the Investigation

The product covered by this investigation is wind towers from Vietnam. For a full description of the scope of this investigation, *see* the “Scope of the Investigation” in Appendix I of this notice.

Scope Comments

Commerce did not receive any scope comments and has not updated the scope of the investigation since the *Preliminary Determination*.

Verification

Because the mandatory respondent in this investigation did not provide necessary information requested by Commerce, we did not conduct verification.

Changes Since the Preliminary Determination and Use of Adverse Facts Available

Commerce has made no changes to the *Preliminary Determination*. As stated in the *Preliminary Determination*, we found that the application of facts available with an adverse inference with respect to the examined respondent was warranted, in accordance with sections

¹⁵ *See Existing Wind Towers Order; Amended Final Determination. See also* Commerce’s Memorandum, “CS Wind Entities,” dated concurrently with this memorandum (Final Analysis Memo).

776(a) and (b) of the Tariff Act of 1930, as amended (the Act).¹⁶

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Affirmative Determination of Critical Circumstances

In accordance with section 733(e)(1) of the Act and 19 CFR 351.206, we preliminarily determined that critical circumstances did exist with respect to imports of wind towers from Vietnam because the factors under section 773(e)(1)(A) of the Act were met. Our final determination remains unchanged. Accordingly, pursuant to section 735(a)(3) of the Act, we find that critical circumstances do exist with respect to imports of wind towers from Vietnam. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Issues and Decision Memorandum.

Final Determination

The final estimated weighted-average dumping margins are as follows:

¹⁶ *See Preliminary Determination* at 3-10.

Exporter and Producer	Weighted-Average Dumping Margin (percent)	Cash Deposit Rate (Adjusted for Subsidy Offset) (percent)¹⁷
CS Wind Vietnam Co., Ltd. a/k/a CS Wind Tower Co., Ltd. ¹⁸ and CS Wind Corporation ¹⁹ (collectively, the CS Wind Group)	65.96	63.80

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, because we continue to find that critical circumstances exist, we will direct CBP to continue to suspend liquidation of all entries of wind towers, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after November 16, 2019, which is 90 days prior to the date of publication in the *Federal Register* of the affirmative *Preliminary Determination*.

This investigation covers a single producer and exporter combination that is excluded from the *Existing Wind Towers Order* covering the same merchandise from Vietnam (A-552-814). Pursuant to section 735(c)(1) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin as follows: the cash deposit rate for the company listed in the table above will be equal to the company-specific estimated weighted-average dumping margin identified for that

¹⁷ In the companion countervailing duty (CVD) investigation, Commerce calculated a 2.16 percent export subsidy rate for CS Wind Vietnam Co., Ltd. See unpublished *Federal Register* notice titled “Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination,” dated concurrently with this notice, and accompanying Issues and Decision Memorandum.

¹⁸ CS Wind Tower Co., Ltd. is a former name for CS Wind Vietnam Co., Ltd; see also Final Analysis Memo.

¹⁹ In the *Preliminary Determination*, we stated that CS Wind is the only producer and exporter of wind towers in Vietnam not currently subject to the existing antidumping duty order on wind towers from Vietnam. See *Preliminary Determination* at 1 (citing *Existing Wind Towers Order*); and *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony With the Final Determination of Less Than Fair Value Investigation and Notice of Amended Final Determination of Investigation*, 82 FR 15493 (March 29, 2017)). Commerce clarifies that this investigation covers wind towers excluded from the *Existing Wind Towers Order* (i.e., wind towers produced and exported by the CS Wind Group, which includes both CS Wind and CS Wind Corporation). For further information, see the Clarification of the Respondent’s Name section, *supra*, Issues and Decision Memorandum, and Final Analysis Memo.

company in the table. These suspension of liquidation instructions will remain in effect until further notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce makes an affirmative determination for export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rate(s). In this case, we have found export subsidies for certain respondents. However, suspension of liquidation for provisional measures in the companion CVD case has been discontinued; therefore, we are not instructing CBP to collect cash deposits based upon the estimated weighted-average dumping margin adjusted for export subsidies at this time.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of wind towers from Vietnam no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered,

or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the “Continuation of Suspension of Liquidation” section.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: June 29, 2020.

Jeffrey I. Kessler,
Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.*, where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.*, flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.*, accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Clarification of the Respondent
- IV. Scope of the Investigation
- V. Adjustment for Countervailed Export Subsidies
- VI. Application of Adverse Facts Available
- VII. Discussion of the Issues
 - Comment 1: Application of Total Adverse Facts Available to CS Wind
 - Comment 2: Critical Circumstances
 - Comment 3: Moot Issues
- VIII. Recommendation

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